

IV. REMARKS

In the Office Action, objection was made to claim 22 in view of informalities, as set forth in Point 1 of the Action. Claim 22 is amended by adopting suggestions of the examiner, thereby to overcome the objection. Objections were also raised against claims 1-6 in view of informalities as set forth in Point 2 of the Action, these objections being overcome by amendment of various ones of the claims. Claim 18 was also amended to correct an objection based on an informality as set forth in Point 3 of the Action.

Claims 1-3, 7-12, and 14-22 were rejected under 35 U.S.C. 102(e) as being anticipated by Tuomela (US Pat. Applic. Pub. 2001/0031633), claim 13 was rejected under 35 U.S.C. 103 as being unpatentable over Tuomela, and claims 4-6 were rejected under 35 U.S.C. 103 as being unpatentable over Tuomela in view of Silverman (US 6,035,031) for reasons set forth in the Office Action.

It is noted that Tuomela was published on October 18, 2001, this date being after the US filing date December 19, 2001 of the present application. The US filing date, November 30, 2000, of Tuomela is prior to the US filing date of the present application. Accordingly, Tuomela is available as a reference under 35 U.S.C. 102(e)/103 effective as of its filing date of November 30, 2000. The present application claims priority, under 35 U.S.C. 119, of a Finnish application (Number 20002814) filed December 21, 2000, which date is three weeks after the Tuomela filing date.

Finland is a WTO country, and 35 U.S.C. 104 permits activity in a WTO country to be used to establish a date of invention, thereby to show conception and diligence relating to the present invention. The filing of a patent application is considered as a constructive reduction to practice of the invention. Herein, there is the filing of the patent application in Finland followed by a filing of the patent application in the United States, the latter filing being within the convention year, and claiming priority in the Finnish application.

Accordingly, there is need to show conception and diligence only during a critical period of three weeks, namely, from a point in time prior to the Tuomela US filing date of November 30, 2000, until the filing date in Finland of December 21, 2000.

Presented herewith is a Declaration under 37 C.F.R. 1.131 executed by the inventors Jani PIRKOLA, Jani MANTYJARVI and Urpo TUOMELA named in the present application. The declaration states that a description of the present invention, as set forth in the claims of the present application, is present in the text and figures of the Finnish application, and was present from a time prior to the Tuomela filing date. It is urged that this proves conception at a point in time prior to the Tuomela filing date.

Further, the declaration states that Jukka Maatta, who works in the Intellectual Property Rights department of Nokia in Finland, attended to the performance of tasks relating to the filing of the Finnish application, and that these tasks were performed during the aforementioned period extending from a time prior to November 30, 2000 until December 21, 2000.

As is well known, such tasks involve the preparation of documents to be signed by the inventors, and activity relating to obtaining the signatures of the inventors. However, the declaration notes that Jukka Maatta was also engaged in the adding of further details of the technical implementation of the invention and the drafting of new claims describing the invention. It is urged that this proves diligence from a point in time prior to the Tuomela filing date until the filing of the Finnish patent application.

The Finnish patent application and its English translation were filed previously at the United States Patent and Trademark Office and, accordingly, are believed to be in the hands of the examiner. Therefore, they are not included as exhibits accompanying the declaration.

Therefore, based on the material in the Finnish patent application describing the present invention, and based on the dates and time frame of activity in Finland established in the declaration, it is concluded that conception of the invention claimed in the present application occurred prior to the Tuomela filing date, and that the conception has been followed by diligence until the constructive reduction to practice of the invention in the filings of the Finnish and United States patent applications.


Since the rejections under 35 U.S.C. 102 and 103 are based only on the teaching of Tuomela, and Tuomela in view of Silverman, the submission of the present Declaration under 37 C.F.R. 1.131 is believed to overcome these grounds of rejection so as to secure allowance of the claims.

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are

clearly novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

A check in the amount of \$120.00 is enclosed for a 1 month extension of time. The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,


Geza C. Ziegler, Jr.
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21 Jan 2005
Date

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service on the date indicated below as first class mail in an envelope addressed to Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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